

STATE OF MINNESOTA
OFFICE OF ADMINISTRATIVE HEARINGS
FOR THE MINNEAPOLIS CITY COUNCIL

In the Matter of Tobacco Dealer, Grocery,
Food Manufacturer, and Gasoline Filling
Station Licenses Held by Imman Conoco,
for Premises Located at 2606 Penn
Avenue North, Minneapolis.

**FINDINGS OF FACT,
CONCLUSIONS OF LAW
AND RECOMMENDATION**

The above-entitled matter came on for hearing before Administrative Law Judge Steve M. Mihalchick, acting as a hearing officer for the Minneapolis City Council, commencing at 9:30 a.m. on Wednesday, December 10, 2001, at the Office of Administrative Hearings. The hearing continued on December 11 and concluded on December 12, 2001. The hearing was held pursuant to a Notice of Complaint and Notice of Hearing dated June 18, 2001. The Notice of Complaint was amended on October 18, 2001 and again on November 9, 2001.

William C. Dunning, Assistant Minneapolis City Attorney, 333 South 7th Street, Suite 300, Minneapolis, Minnesota 55402-2453, appeared on behalf of the Division of Licenses and Consumer Services of the City of Minneapolis. (the City). Jonathan Fruchtmann, Attorney at Law, 1422 West Lake Street, Minneapolis, Minnesota 55408, appeared on behalf of the Licensee (hereinafter "Imman Conoco" or "Licensee"). The record closed on January 3, 2002, with the receipt of the parties' post-hearing briefs.

NOTICE

This Report contains a recommendation and not a final decision. The final decision will be made by the Minneapolis City Council, which may affirm, reject, or modify the Findings and Conclusions contained herein. The Council will consider the evidence in this case and these recommended Findings of Fact and Conclusions, but will not consider any factual testimony not previously submitted to and considered by the Administrative Law Judge. The Licensee will have an opportunity to present oral or written arguments alleging error on the part of the Administrative Law Judge in the application of the law or interpretation of the facts and may present argument related to the recommendation. The Council's decision as to what, if any, adverse action shall be taken will be by resolution under Chapter 4, Section 17 of the Minneapolis City Charter. To ascertain when the Council will consider this matter, the parties should contact the City Clerk, Council Information Division, 350 South Fifth Street, Room 304, Minneapolis Minnesota 55415-1382, telephone number (612) 673-3136.

STATEMENT OF ISSUE

The issue in this matter is whether good cause exists for adverse action against the Licensee's existing business licenses and denial of license renewal applications due to the Licensee's failure to adequately mitigate the sale of controlled substances on and

near the premises of the Licensee's business, the improper sale of cigarettes, the improper sale of second-hand cellular telephones, and the failure to comply with the City's video surveillance ordinance.

Based upon all of the files, records and proceedings herein, the Administrative Law Judge (ALJ) makes the following:

FINDINGS OF FACT

1. Imman Conoco has been continuously licensed by the City of Minneapolis since March 1999. Imman Conoco currently holds licenses to sell tobacco products, operate a grocery, operate a delicatessen, and operate a gasoline filling station. The Licensee operates as a "convenience store" selling prepackaged food, cigarettes, gasoline, lottery tickets and other merchandise. Recorded music on compact disk and audiotape is sold at a glass counter situated in the east end of the store. Cellular telephones, pagers, and accessories are also sold at that counter. Two automatic teller machines (ATMs) and two coin-operated telephones are situated in the store. A coin-operated industrial vacuum cleaner (commonly known as a car-vac), a bin for bulk ice, and a vending machine for soft drinks are outside, to the east end of the building along the front. Two other vending machines for soft drinks are located at the west end of the building along the front. The gas pumps are located directly in front of the store, on islands to allow for the flow of traffic into and out of the Licensee's parking lot.

2. Imman Conoco is a corporation. The sole owner of the corporation is Mr. Nabil al Kordi. Mr. al Kordi maintains that he has no employees, but other persons do work at the store on a regular basis.^[1] For a time, Imman Conoco had a manager who supervised others working in the store. The manager reported to Mr. al Kordi.

3. The business premises are located on the northeast corner of 26th and Penn Avenue North in Minneapolis, in the Jordan neighborhood. Imman Conoco leases these premises. The lease began on February 15, 1999.^[2] The immediate area is primarily residential, with occasional retail businesses. Penn Avenue is a major thoroughfare with significant levels of automobile and bus traffic. Another major thoroughfare, Broadway Avenue, is two blocks away. Additional businesses are located along Broadway Avenue in the vicinity of 26th Avenue North.

4. The business premises consist of a parking lot, gasoline pumps, and a single building. One entrance to the parking lot is on 26th Avenue North. The entrance allows vehicle access to the gasoline pumps, located near the center of the parking lot. There is sufficient room between the pumps and the southern edge of the lot for automobiles to park. For a time, two coin-operated telephones were located on the public property adjacent to the lot along 26th Avenue North, facing toward the store. Those telephones were installed at a height and in a manner that enabled them to be used from within an automobile situated on the Imman Conoco lot.^[3] There are parking spaces marked on the lot, immediately in front of the store. Another entrance to the parking lot opens onto Penn Avenue.

5. The building has one functioning door, facing south toward the parking lot.^[4] Upon entering the store, the checkout counter is along the south side of the building on the left of the entrance. There are no physical obstructions to prevent the clerk from observing persons in the vicinity of the door. The checkout counter has large windows that afford a view of the gas pumps and the parking area in front of the store.

6. In 1999, neighbors of Imman Conoco complained to the City of drug dealing going on in the shadow of the east side of the store. The house adjacent to the business premises on the east side is boarded and is known to be used by drug dealers and drug users. Due to the complaints, the Minneapolis Police Department (MPD) opened a SAFE file on the business premises.^[5] Officer Keeler of the MPD first visited Imman Conoco on January 10, 2000. The owner was not present and Officer Keeler left a business card.

7. Julie Herrmann Casey, License Inspector for the City, visited Imman Conoco on February 29, 2000. Casey cited the Licensee for the condition of the fencing along the alley to the east side of the business premises.^[6] The condition of the parking lot and presence of litter and debris were also cited. Casey found that the clerk's view of the gasoline pumps was obscured by signs and ordered them removed. The Licensee was given until March 20, 2000 to contact the City Zoning Department to complete a site plan.

8. As part of the SAFE process, Officer Keeler collected impact statements from community members. After a number of attempts, Officer Keeler was able to interview Mr. al Kordi on March 22, 2000. The issues that had been identified by Casey were discussed, as well as the need for the Licensee's employees to proactively respond to the problems with criminal activity on the premises. By that date, there had been 88 documented police reports of criminal activity or other MPD response to calls to the Licensee's address.^[7]

9. Another identified problem, unrelated to Imman Conoco, was the location of a bus bench at the corner of 26th Avenue North and Penn Avenue. Officers attempting to conduct stops of persons loitering there would be told that the persons weren't loitering, they were waiting for the bus. As part of the SAFE process, the bus bench was moved from the corner to a location a short way up the block. This put the bus bench just north of the west end of the Imman Conoco store, in an area that is not well lit. The change was made in early Summer 2000.

10. On June 8, 2000, Officer Keeler again visited the business premises. The fence was fixed, landscaping was being modified, and signs were posted regarding speeding and trespassing.^[8] Off-duty MPD officers had been hired to work part-time on the premises on Thursday, Friday, and Saturday nights.^[9] Officer Keeler noted that there were 52 documented police reports between April 1 and June 26, 2000.^[10]

11. Inspector Casey made numerous visits to Imman Conoco due to ongoing issues with ordinance compliance. Mr. al Kordi hired private security in June 2000 to actively prevent loitering. The reaction from the people who were being moved off of

the premises rapidly escalated toward credible threats of violence. Mr. al Kordi concluded that the situation was unsafe for the private security guard and discontinued that approach. Mr. al Kordi arranged for off-duty MPD officers to provide security beginning in late June 2000. Imman Conoco paid a scheduling fee of \$140.00 per month and each officer hired cost \$140.00 per night. The police presence was scheduled to provide more coverage early in the month and on Thursday, Friday and Saturday of the week. The presence of the off-duty police officers dramatically reduced the loitering on the business premises.

12. The City convened a Technical Advisory Committee hearing (TAC hearing) on July 5, 2000 to address the Licensee's site plan compliance, noncompliance with citations, operating the business in a nuisance manner, operation without a required license, and addressing issues with coin-operated telephones.^[11]

13. The site plan issues were addressed prior to the TAC hearing.^[12] Issues from a health inspection had been mostly resolved by that time. Imman Conoco's failure to comply with the ordinances concerning littering and obstructing the clerk's view of the gasoline pumps had been addressed in May 2000. Mr. al Kordi indicated that he would obtain a food manufacturing license and renew his grocery and tobacco licenses.^[13] The TAC committee informed Mr. al Kordi that he needed a second hand goods dealer license if Imman Conoco wanted to sell used cellular telephones.

14. The issues of nuisance activity at the business and use of the coin-operated telephone were discussed at the TAC hearing. Police reports were considered as part of that proceeding. References to the business premises in those reports included "the fact it is an open air drug market," "known for drug dealing/loitering," "the source of a large amount of Police calls for narcotics, loitering and trespass," and "known for heavy selling of narcotics."^[14] The MPD treated the business premises as a "directed patrol area," meaning that officers were instructed to focus attention on the location and engage in more aggressive policing there.

15. The MPD reports from this time period described the conduct of persons selling marijuana at the location. The dealers would loiter on the store premises, outside near the front door. Upon seeing the police, these persons would enter the store and act as though they were shopping. If the police were to leave the vicinity, the dealers would go back outside and remain near the door. If the police moved toward the dealers, they would enter the store and attempt to hide the marijuana on the shelves behind products for sale. On at least one occasion, marijuana may have been retrieved by others working with the dealer before the police could find it.^[15] This behavior was described in a police report as "a common practice."^[16]

16. Community impact statements from three residents in the neighborhood were also considered at the TAC hearing. One statement indicated that "Since Conoco Oil reopened this station, conditions in the neighborhood have totally worsened."^[17] All of the statements objected to Imman Conoco continuing in business.

17. A list of actions to be taken by Imman Conoco as a means of addressing the ongoing problems was arrived at through the TAC hearing. These actions included continuing the presence of off-duty police officers for at least 20 hours per week through August 2000, limits on the coin-operated telephone calling time and hours of operation, prevention of loitering on the premises, removal of litter at least twice per day, and obtaining required licenses. Mr. al Kordi signed the TAC hearing Recommendation, just below the paragraph that stated:

I have read the above report and recommendations. I agree with the report, and I agree with the above recommendations. I understand that failure on my part or the part of my business to adhere to this agreement with the Department may lead to further action against my licenses. I understand that this report must be accepted by the Minneapolis City Council and signed by the Mayor. I understand that future violations may put my license in jeopardy.^[18]

18. Mr. al Kordi applied for the required licenses immediately after the TAC hearing. Imman Conoco made no application for a second hand good dealer license. Imman Conoco continued the off-duty MPD presence until September 2000. Conditions in the vicinity of the business premises improved at that time. The MPD noted the change in comments to the Business Licensing Division of the City.^[19] These improvements coincided with a major effort by the MPD suppress the drug dealing and loitering in the immediate area of Imman Conoco.^[20]

19. In January 2001, the MPD and the City noted an increase in the loitering and drug dealing activity on Imman Conoco's premises. On January 26, 2001, MPD officers observed a group of males loitering in the Imman Conoco lot. When the marked MPD squad car of these officers approached, most of the group ran into the store. One of them was armed with a knife with brass knuckles in the handle. He was carrying 15 "rocks" that field tested positive for crack cocaine.^[21] A similar situation was observed on January 31, 2001, where the arrestee dropped eight rocks of crack cocaine.^[22] On February 3, 2001, a plainclothes MPD officer purchased three rocks that were claimed to be crack cocaine by the dealer who was situated immediately outside the door to Imman Conoco.^[23]

20. Ayyoub Berroug was working at Imman Conoco on February 6, 2001. There were a group of five juveniles and young men standing in the doorway of the store. Since they were obviously loitering, Mr. Berroug told them to leave. They moved outside the door, and loitered there. When Mr. Berroug went outside to ask them to leave the lot, he was assaulted by the group. He was punched and kicked, resulting in a broken nose and other facial injuries. The MPD was called and officers responded. The five assailants were not identified by name, but Mr. Berroug indicated that he knew them by sight.

21. On February 12, 2001, the holder of a lottery ticket came into Imman Conoco. He gave the ticket to Mr. Berroug (who was working at the cash register at that time) who scanned the ticket. Mr. Berroug told the ticket holder that it was not a

winner. The ticket holder left the store, and returned soon after and struck Mr. Berroug with a juice bottle. The MPD was called and officers responded. An officer asked for the surveillance system videotape and the manager told the officer that the security camera wasn't working.^[24] Officer Judy Perry of the MPD SAFE unit contacted Casey on the issues regarding Imman Conoco's security cameras and lack of availability of videotape.

22. Imman Conoco never applied for a second hand goods license. The MPD suspected that used cellular telephones were being sold there without proper licensure. On February 15, 2001, an undercover officer of the MPD attempted to make a "controlled buy" of a used cellular telephone. Nidal Mashni was in charge of the store when the officer sought to buy a used telephone. Mashni telephoned Mr. al Kordi (who was in his car in the parking lot resting because he was ill) and informed him that a customer wanted to buy a used cellular telephone. Mr. al Kordi informed Mashni that only new telephones could be sold. The undercover officer completed the purchase of a new cellular telephone for \$100.00, and then he left the store. The officer returned a few minutes later and asked to return the telephone that he had just purchased. While the refund was being processed by Mashni, the officer told him that he would rather exchange the new telephone for the used telephone that the officer wanted. Mashni told him that there could be a problem programming the telephone. The officer said that he would take care of that. Mashni then exchanged a used cellular telephone for the new telephone. The undercover officer then left the premises.

23. At that time, the other officers detailed to the operation entered the premises and seized the stock of used cellular telephones and pagers. There were 271 used cellular telephones and 52 used pagers. Mr. al Kordi and Mr. Mashni were handcuffed. After the search of the premises and seizure of the used telephones and pagers, Mr. al Kordi and Mr. Mashni were released. One of the cellular telephones was identified as stolen and returned to its owner.

24. On February 21, 2001, officers of the MPD received a call that unwanted persons were at Imman Conoco. The officers responded and observed seven people in the lot who scattered when the officers pulled into the parking lot. The officers were told by employees in the store that they had asked the group to leave several times.^[25] The officers returned ten minutes later and found two of the group back in front of the store. They were searched and officers found seven "dime bags" of marijuana and a one-ounce scale.^[26]

25. On Feb 23, 2001, Casey and Officer Perry visited Imman Conoco. They discussed with Mr. al Kordi the need for changing the placement of the security cameras to provide views of the person standing in front of the counter and views of the front door. Casey issued a Notice of Ordinance Violation for failing to demonstrate that the video surveillance system was recording on February 12 and 17, 2001.^[27] The Notice required compliance with the recording requirement and the positioning instructions by March 2, 2001. The Licensee's attorney replied on March 7, 2001 that Imman Conoco had resumed hiring off-duty MPD officers "two weeks ago" for random shifts and that the employees were "vigorously asking suspicious persons not to loiter or

trespass on their property.”^[28] In that same reply, Imman Conoco objected to Casey’s request that the pay telephones at the south edge of the premises be turned off.^[29]

26. Casey considered Imman Conoco’s response to be insufficient and she issued a Notice of Order of Violation dated March 13, 2001. Imman Conoco replied through its attorney on March 27, 2001. Casey checked on the premises in early April 2001 and found that the cited violations had been fixed.^[30]

27. To assist in the prevention of loitering, Casey directed that the two coin-operated telephones along the south edge of the premises be removed. They were removed, over the objection of Imman Conoco.

28. The MPD Community Response Team (CRT) made directed patrols in the immediate area of Imman Conoco in May 2001. Officers made undercover purchases of marijuana and observed loitering for lengthy periods of time by persons suspected of drug trafficking.^[31] The employees of Imman Conoco were making no effort to get the dealers to leave and did not contact the MPD to report the behavior.

29. On June 18, 2001, the Minneapolis City Attorney’s Office issued a Notice of Complaint and Notice of Hearing to Imman Conoco. The Notice of Complaint recounted the evidence that led to the July 5, 2000 TAC hearing, the police reports identifying the address, the instance of nonfunctioning video surveillance on February 12, 2001, and the sale of a used cellular telephone on February 15, 2001 as the grounds for adverse action. The Notice of Complaint alleged that such conduct constituted good cause for taking adverse action against the business licenses of Imman Conoco. "Adverse action" was described in the Notice of Complaint as including "revocation, suspension, fines and other penalties and conditions."^[32]

30. On September 1, 2001, two MPD officers in a marked MPD squad car observed two persons loitering in front of Imman Conoco.^[33] When the squad car pulled into the lot, the two entered the store. The officers parked the squad car out of sight of the front and entered the store. They found the two men in the back of the store, where one was selling marijuana to the other. The officer witnessed the exchange of the money and marijuana and he arrested both of them. Ten baggies of marijuana were seized from the dealer. One officer found a large baggie of marijuana concealed behind a wire display rack near where the dealer had been hiding.

31. On September 8, 2001, at about 1:30 p.m., Candra Edwards stopped in with her mother at the Imman Conoco to purchase a few items. She saw several young men loitering in the doorway of the store. One of them went out to a car, dropped something inside and received money from an occupant of the car. A juvenile on a bicycle stopped in to the store and asked for a cigarette from the clerk at the counter. She asked what kind, was told “Newport” by the juvenile, and she stated that it would be a quarter. The juvenile gave the clerk a quarter and was given a single cigarette. Ms. Edwards reported this conduct to the office of the City Council member representing that ward.

32. Officer Perry visited Imman Conoco to check the video system in late September 2001. The positioning of the cameras near the checkout station did not afford a view of the customer. Officer Perry directed Mr. al Kordi to change the angle of the camera and eliminate obstructions to the view. The need for adequate sightlines down aisles was also discussed with Mr. al Kordi.

33. On September 22, 2001, an off-duty MPD officer and a marked MPD squad car were present at Imman Conoco. Undercover officers patrolling the area observed one person signaling with the "smoking" sign.^[34] He was located in the driveway at the south side of the lot. When the undercover officers returned after circling the block, that individual was not there. At that time, two males riding bicycles were circling the gas pumps. Upon seeing the undercover officers, both bicyclists made the smoking sign. The officers were directed to the first person they saw, who was now by the northbound bus stop. This location is out of sight of the clerk and the off-duty police officer in the store. At that location a marijuana buy was made and two persons arrested. One person had marijuana and crack cocaine in her possession.

34. At 4:30 p.m. on September 25, 2001, an undercover officer observed a juvenile male with a bicycle smoking a cigarette on the sidewalk in front of Imman Conoco.^[35] That officer summoned two uniformed officers who apprehended and identified the juvenile. The officers requested the videotape from the Licensee to determine if the juvenile purchased the cigarette from the store. The officers indicated that the videotape received from Imman Conoco was unreadable.^[36]

35. Officer Snyder of the CRT has spent significant amounts of time engaged in policing specifically directed toward problem activities in the neighborhood, including prostitution. When working undercover on prostitution stings, Officer Snyder would pick up suspected prostitutes who would expect to obtain crack cocaine prior to providing services. The prostitutes frequently identified the Conoco at 26th Avenue North and Penn Avenue as the location to obtain the cocaine. After receiving numerous reports of this location as a source for cocaine, Officer Snyder decided to arrange for video surveillance of the premises.

36. On September 26, 2001, MPD officers conducted videotape surveillance of Imman Conoco's lot from a location across Penn Avenue. The surveillance observed conduct similar to the variety of police reports regarding loitering and drug trafficking on the Licensee's premises.^[37] Dealers loiter in the lot, immediately in front of the door. The "smoking" sign is given to passing cars on Penn Avenue. The dealers approach store patrons as they arrive at the store. On some occasions, the dealers will lean into cars and pass a baggie inside in exchange for cash. The dealers will sometimes move into the store and watch the parking lot from inside the doorway.

37. Mr. al Kordi was present at the store during the surveillance. He walked past one of the dealers (who was wearing a white sweat band on his head) as he stood next to the doorway. Several minutes later, Mr. al Kordi walked back into the store, past the same individual. Within a few minutes after that, Mr. al Kordi came out into the parking lot to instruct an employee on picking up litter. To get out of the store, Mr. al

Kordi had to put his hands on the shoulders of the dealer wearing the sweatband and gently push him out of the doorway. While Mr. al Kordi's attention was directed toward the employee, this same drug dealer consummated the sale of a baggie that appeared to contain marijuana. This transaction took place within ten feet of Mr. al Kordi.^[38] Immediately after concluding the transaction, the drug dealer went to a vehicle parked in the lot and left the premises. The purchaser of the baggie also went to his car and left.

38. Some minutes later, a marked MPD squad car pulled into the lot and an officer entered the store. None of the persons who had been lingering in the lot remained there while the squad car was present. Mr. al Kordi came out with the officer and surveyed the lot as the officers left. Thirty minutes after the squad car left, one of the dealers (wearing a dark hooded sweatshirt) who had been at the store resumed loitering in front of the store, near the door. Another (who had also been present during the transaction in Mr. al Kordi's presence) rode a bicycle in the parking lot before entering the store. They loitered in front of the store, before one moved out to the public sidewalk at the corner and headed south on Penn Avenue. Squad cars were directed to meet that individual, once he was down the block. A search of this individual resulted in the seizure of three baggies appearing to contain marijuana.^[39] Shortly after this, a different group of four young men arrived. Mr. al Kordi met these individuals as they arrived and waved them off of the lot. The group left without argument.

39. On October 18, 2001, the City amended the Notice of Complaint to add the September 8, 2001 drug and cigarette transactions and the results of the September 26, 2001 video surveillance to the allegations against Imman Conoco.

40. On November 9, 2001, the City further amended the Notice of Complaint to add charges regarding loitering and drug transactions on September 1, 12, 17, 22, and 29, 2001, persons fighting on the property on October 4 and 17, 2001, and the allegation of a juvenile purchasing a cigarette from the Licensee on September 27, 2001.^[40]

41. Two neighbors of Imman Conoco testified in this matter. Both neighbors indicated that Mr. al Kordi was frequently out picking up litter outside Imman Conoco. Both neighbors testified that Mr. al Kordi was active in chasing away drug dealers. Neither of them indicated that anyone working for the business other than Mr. al Kordi was active in removing drug dealers.

Based upon the foregoing Findings of Fact, the Administrative Law Judge makes the following:

CONCLUSIONS

1. The Administrative Law Judge and the Minneapolis City Council have authority to consider the charges against the Licensee and the adverse action, if any, that should be imposed by the City pursuant to Chapter 4, Section 16 of the Minneapolis City Charter.

2. The City has complied with all relevant substantive and procedural legal requirements.

3. The Licensee received adequate and timely notice of the hearing and of the charges against it.

4. Under the Minneapolis Code of Ordinances, Title 10, Article II, Chapter 188.350, states: "Any license granted under this chapter may be revoked by the mayor or the city council as in the city charter provided."

5. The Minneapolis City Charter, Chapter 4, Section 16 states:

Section 16. Licenses May Be Revoked. Any license issued by authority of the City Council may be revoked by the City Council at any time upon proper notice and hearing for good cause; and upon conviction before any court of any person holding such a license for a violation of the provisions of any law, ordinance or regulation relating to the exercise of any right granted by such license, the city council may revoke such license in addition to the penalties provided by law or by ordinance for any such violation.

6. The City has the burden of proof to establish, by a preponderance of the evidence that good cause exists for taking adverse action against the business licenses held by the Licensee. ^[41]

7. The City has demonstrated that good cause exists for taking adverse action against the business licenses held by the Licensee.

Based upon the foregoing Conclusions, the Administrative Law Judge makes the following:

RECOMMENDATION

IT IS HEREBY RECOMMENDED: That the Minneapolis City Council take adverse action against the licenses held by Imman Conoco.

Dated this 14th day of January, 2002

/s/ Steve M. Mihalchick

STEVE M. MIHALCHICK
Administrative Law Judge

Reported: Taped, six tapes. No transcript prepared.

MEMORANDUM

The City has demonstrated that significant drug trafficking occurs on the premises of Imman Conoco. The Licensee maintains that this conduct is the

responsibility of the perpetrators and the City has not shown that Imman Conoco is involved in the trafficking.

Any business licensee is responsible for the manner in which business is conducted on its premises. Illegal activity by others, conducted on the business premises, becomes the responsibility of the licensee when there is adequate notice of the illegal conduct and insufficient action taken to prevent subsequent illegal conduct.^[42] As the Minnesota Supreme Court has stated in its review of the City's landlord licensing ordinance:

This ordinance is designed to serve a legitimate public interest, deterring criminal activity in residential neighborhoods, by enlisting the aid of landlords. The ordinance is written to foster cooperation between landlords and the police department's community services bureau to work towards a solution. See Minneapolis Code of Ordinances § 244.2020. As the city points out, all of the conduct specified in the ordinance is criminalized by the state of Minnesota. Further, the responsibilities ascribed to landlords do not appear to be severe and may, we think, be properly deemed incidental to operating rental dwellings in an urban area. Where landlords do not cooperate under the terms of the ordinance, they contribute to the continuation of illegal activity in their buildings. In the face of such action, the city is well justified in revoking their licenses.^[43]

A similar approach has been upheld regarding the licensing of convenience stores. The City pursued revocation of the licenses of CUP Foods, Inc., a convenience store located in a high crime neighborhood, after persistent evidence of drug trafficking was obtained by the MPD. The Minnesota Court of Appeals upheld the City's finding of "good cause" for revocation of CUP Foods' licenses, stating:

Although there is no direct evidence that relator or his employees observed drug transactions, there is ample evidence, including the evidence of the controlled buys, that such transactions took place in and around CUP Foods and that relator knew that crime in and near the store was an ongoing problem. Although relator made efforts to improve security and reduce crime, he failed to decrease the height of store shelves or remove window advertisements, and, until very recently, relator had abandoned the use of security guards.

* * *

The evidence, therefore, is substantial and supports the conclusion that respondent had "good cause" to take adverse license action against relator.^[44]

Imman Conoco maintains that the City has failed to prove the actions asserted due to the City's reliance on police reports. The licensee asserts that the length of time spent on the premises before a person becomes a loiterer is unclear. The Licensee asserts that the police reports do not indicate how long persons have been on the premises and, therefore, the reports do not demonstrate that loitering occurred.

This argument mischaracterizes the content of the record and the descriptions of conduct contained in the police reports. The evidence of loitering comes from eyewitness testimony (including an employee of Imman Conoco), the police reports, and videotape. The police reports include descriptions of surveillance, conducted both from stationary locations and while on routine patrol, that identify the same persons remaining on the premises. These persons who are remaining on the premises are not purchasing any goods from the Licensee. That conduct is ample evidence that illegal activity in the form of loitering takes place on a regular basis on the Licensee's premises.

The City's evidence regarding drug trafficking is disputed by Imman Conoco. While acknowledging that persons have been arrested on the business premises, the Licensee points out that there is no evidence regarding convictions. The Licensee also points out that no expert testimony was offered as to any testing on any substances seized. Imman Conoco asserts that the absence of this evidence shows that the City lacks substantial evidence of good cause to take action against the Licensee.

The City is not attempting to obtain a criminal conviction in this matter. The essential issues are whether nuisance activity exists on the premises, whether the Licensee was aware of the activity, and whether the Licensee's response to the activity is adequate. The evidence shows police calls identifying the activity as drug trafficking, police surveillance observing activity constituting probable cause for searches, discovery of suspected contraband constituting probable cause for arrest, statements by arrestees indicating that they were engaged in drug trafficking, and reports on the field testing conducted on some of the contraband showing that it is, in fact, a controlled substance. The allegations of drug trafficking on the premises are amply supported by the evidence in the record.

The manner in which the drug trafficking takes place leaves no doubt as to what is going on. On some occasions, dealers stand in the parking lot on the premises and make "smoking" hand gestures to signal that marijuana is for sale. An automobile will pull into the lot with the occupants remaining inside the car. A dealer will approach the vehicle and lean inside, dropping something inside in exchange for cash. The car then leaves without any business being transacted with the licensed business on the premises. The dealer remains on the premises to await the next transaction. The entire transaction takes place in full view of the clerk's windows facing the gasoline pumps.

The dealers do not merely remain outside in the parking lot. They will from time to time stand inside the store, near the door, waiting for customers. From that location, the dealers are in full view of the clerk. The dealer will go out when a car pulls up and conduct the same sort of transaction. The dealer then returns to the store and the automobile leaves. There are credible reports in the record that such behavior has gone on for extended periods and on a very frequent basis.^[45] Under such circumstances, drug trafficking has become effectively established as a parallel business to the one operated by the Licensee.^[46]

Over the entire period of the Licensee's operation of this business at 26th Avenue North, significant levels of drug trafficking have occurred there. Due to the large number of documented arrests, there has been no effort to identify all of them in the

Findings of this matter. The drug trafficking conduct is substantially similar in all of the instances. Specific police stops have been identified to provide concrete examples of the obviousness of the conduct and the absence of Licensee response. The only periods when that trafficking decreased were when the Licensee hired off-duty MPD officers to provide security at the premises. That practice was initiated by the Licensee under the threat of license revocation through the TAC hearing process. The consistent use of off-duty MPD officers was discontinued soon after the hearing process concluded.^[47]

The Licensee cites the incident on September 22, 2001, as proof that the presence of off-duty police officers does not prevent loitering and drug trafficking. But the circumstances of that incident are significantly different from the situation without an off-duty officer. The initial signaling occurred from the driveway, which is the public sidewalk at that location. When the officers returned, the dealer had already left that location. Others were on the premises at that time, but they were on bicycles and not stopping.^[48] The dealer had moved to a location out of sight from the store (and on the public sidewalk) to conduct the transaction. The connection of the business premises to that drug trafficking incident was minimal.

The impact of having an off-duty officer present is clear when the manner of conducting arrests is compared to situations without an off-duty officer present. The September 22, 2001 arrest took place outside the premises. The officers were able to control the scene and seize contraband without difficulty. On numerous occasions without an off-duty officer present, the dealers run into the store, even though there is no exit other than the front door. Once inside, the dealers claim to be shopping. Contraband is either hidden on display shelving or passed to an accomplice. Controlling the scene is clearly more difficult for the police when the store is utilized as a means of evading arrest. Dealers remaining inside the store when initiating transactions or going into the store when the police are sighted makes the initial police decision to stop and search suspects even more difficult.

Imman Conoco asserts that it is "not responsible for the crime and other social pathologies in this neighborhood."^[49] As the holding in **Zeman** demonstrates, municipalities have the authority under their police power to make business owners responsible for the conduct of others on the business premises. The holding in **CUP Foods** precludes using the character of the neighborhood as a defense to license revocation. Failure to prevent ongoing illegal activity on business premises is good cause to revoke the license of a business. Imman Conoco's measures taken in response to the pervasive drug trafficking have been ineffective at preventing the ongoing use of the business premises as an open-air drug market. Allowing the Licensee to remain in business under these circumstances fosters activity that harms the entire neighborhood. Imman Conoco's failure to reduce this illegal activity is good cause to take adverse action against all of its business licenses, up to and including revocation.

Cigarettes must be sold in a manner consistent with Minneapolis Code of Ordinances, Title 13, Chapter 281.10-.90. A witness observed the sale of a single, unpackaged cigarette to a juvenile appearing to be approximately age 13. The Licensee asserted that the witness might have mischaracterized what happened. The

witness was credible and she had an unimpeded view of the transaction.^[50] The Licensee pointed out that signage was present indicating that Imman Conoco requests age verification for tobacco and lottery purchases. Signs do not sell cigarettes. The clerk on duty had the responsibility to verify the age of the purchaser, particularly where the individual's appearance suggests that the purchaser is a minor. An employee of Imman Conoco sold an unpackaged single cigarette to a minor in violation of Chapter 281.45 (requiring sale in multiples with tax stamp affixed to package) and Chapter 281.50 (prohibiting sales to minors). This violation is good cause to take adverse action against Imman Conoco's tobacco dealer license.

The September 25, 2001 juvenile smoking incident was described in the second amendment to the Notice of Complaint as a violation of the prohibition against sale of tobacco to minors. The report of the arresting officers demonstrates clear suspicion that the juvenile purchased the cigarette in the store. To investigate, the officers requested the videotape from the employee on duty. The videotape they received was unviewable. Imman Conoco points out that there is no evidence as to who (if anyone) sold a cigarette to that juvenile. The only ordinance violation that could be demonstrated from this incident is of the videotape surveillance ordinance, but no such violation was alleged.

Under the videotape surveillance ordinance, convenience stores are required to maintain cameras in working order and retain recorded images for a period of at least five days before reusing the tape or destroying the images.^[51] The positioning of the cameras is subject to the direction of the City's licensing inspector. Imman Conoco was directed to adjust the positioning of its cameras to capture images of persons standing in front of the clerk's station. The Licensee has failed to provide tapes when requested by MPD officers on February 12, 2001 and September 25, 2001.

Imman Conoco maintains that the officers asked an employee for the tape on February 12, 2001 and only the owner has access to the tapes. The ordinance does not allow a business to condition its obligation to provide tapes. The business has the duty to make the recordings available to the police. Failing to provide the tape (as on February 12, 2001) or providing an unreadable tape (as on September 25, 2001) are both violations of the videotape surveillance ordinance. Similarly, the repeated failures to provide a clear view of the location immediately in front of the cashier's position for the videotape is a violation of the ordinance. These violations constitute good cause to take adverse action against all Imman Conoco's business licenses.

The City maintains that the unlicensed sale of a used cellular telephone on February 15, 2001 constitutes a separate ground for revoking Imman Conoco's licenses. The Licensee asserts that the circumstances of the sale demonstrate that no action should be taken against those licenses. There was a purchase of a used cellular telephone on that date at Imman Conoco. But Mr. al Kordi had given express and unequivocal instructions to his employee on two occasions immediately prior to the sale that only new cellular telephones could be sold. A business licensee is responsible for the actions of an employee, but the action in this case is clearly misconduct on the part of the employee. Imman Conoco has demonstrated that it was not engaged in the sale of used telephones on a regular basis. The trade of the new telephone for a used

telephone was an isolated incident taken on the initiative of the employee, not as part of the business. Any sanction imposed on this ground should reflect that fact.

In the second amendment to the Notice of Complaint, the City makes two allegations regarding persons fighting on the business premises. There is a police report of one these incidents in the record.^[52] The second incident appears only as a dispatch report in response to a call for service. There are no circumstances identified regarding these incidents to show that the Licensee had any notice that such behavior would be going on at the store. Similarly, there is no evidence that the Licensee failed to respond appropriately to any of the fighting incidents that have occurred in the vicinity. The instances of fighting on the business premises do not constitute good cause for adverse action against Imman Conoco's business licenses.

The record in this matter indicates that the Licensee was fully aware of the drug trafficking conducted on his business premises and has taken insufficient action to correct this ongoing situation. The Licensee sold a single unpackaged cigarette to a minor in violation of City ordinance. The arrangement of video surveillance cameras and failure to provide a readable tape of various incidents on request are violations of City ordinance. The sale of a used cellular telephone on February 15, 2001 without the proper license is a *de minimus* violation of the second hand goods vendor license requirement. The City has demonstrated by a preponderance of the evidence that good cause exists to take adverse action against the business licenses of Imman Conoco. The sanctions and conditions to be imposed on Imman Conoco for the demonstrated violations are up to the Minneapolis City Council.

S.M.M.

^[1] Mr. al Kordi described the relationship with these persons as "cash help."

^[2] al Kordi Testimony.

^[3] Exhibit 35, Attached Exhibit 10.

^[4] A second door on the front has been sealed off and is not currently usable. There is also an emergency exit door.

^[5] SAFE units are part of the MPD program to address problems with crime by combined efforts with the police and the community. The acronym stands for "SAfety For Everyone."

^[6] Exhibit 8, at 000255.

^[7] Exhibit 8, at 000256.

^[8] Exhibit 8, at 000257.

^[9] *Id.*

^[10] Exhibit 8, at 000257.

^[11] Exhibit 8, at 000233.

^[12] Exhibit 35.

^[13] Exhibit 8, at 000234.

^[14] Exhibit 8, at 000279 – 000285, and 000302.

^[15] Exhibit 8, at 000315.

^[16] *Id.*

^[17] Exhibit 8, at 000335.

^[18] Exhibit 8, at 000236 (emphasis in original).

[19] Gonzales Testimony.
[20] Casey Testimony.
[21] Exhibit 4, 000139. Crack cocaine is sold in single units, identified as rocks.
[22] *Id.* at 000145.
[23] Exhibit 4, at 000157.
[24] Exhibit 2, at 000029.
[25] Exhibit 4, at 000173.
[26] *Id.* "Dime bags" are baggies containing the amount of marijuana that would be sold for ten dollars.
[27] Exhibit 2, at 000017.
[28] *Id.* at 000018.
[29] *Id.* at 000019.
[30] Casey Testimony.
[31] Exhibit 4, at 000192-000198.
[32] Notice of Complaint and Notice of Hearing.
[33] Exhibit 3, at 000030-36.
[34] The "smoking" sign consists of a quick motion of the hand toward the mouth, with two fingers extended, as if holding a cigarette. See Exhibit 10; Officer Snyder Testimony.
[35] Exhibit 3, at 000080.
[36] Exhibit 3, at 000082.
[37] Exhibit 10.
[38] The drug dealer was holding a soft drink that appears to have been purchased at Imman Conoco.
[39] The ALJ notes that Officer Snyder's report of the incident, written three days after the surveillance, differs slightly from the scene recorded on the videotape. The individual wearing the sweatband left by automobile, not on foot as described in the report. See Exhibit 3, at 000087. The dealer wearing the dark hooded sweatshirt left the lot on foot and the videotape shows the stop being made by uniformed MPD officers. The ALJ finds that the dealer wearing the dark sweatshirt was the one apprehended carrying the marijuana, not the individual with the sweat band as referred to in Officer Snyder's report.
[40] The reference to September 27, 2001 was in the amendment was an error. The incident referred to occurred on September 25, 2001.
[41] *In re Kaldahl*, 418 N.W.2d 532, 535 (Minn. Ct. App. 1988).
[42] **Zeman v. City of Minneapolis**, 552 N.W.2d 548 (Minn.1996); Hard Times Café, OAH Docket No. 12-2110-12758-3 ("Good cause to act against the license of a business most clearly exists when the business is aware of the conduct (or such awareness can be imputed by the obviousness of the conduct) and the business neglects to remedy the situation.").
[43] **Zeman**, 552 N.W.2d at 554.
[44] **CUP Foods, Inc. v. City of Minneapolis**, 633 N.W.2d at 557, 564 (Minn.App. 2001).
[45] Mr. al Kordi has made calls to the MPD to report this conduct and obtain assistance in removing loiterers. But there are few instances of Imman Conoco's employees reporting this conduct unless other misconduct has occurred. There are also times where the conduct has occurred with Mr. al Kordi present and the police have arrived on their own initiative.
[46] Imman Conoco asserts that the drug transactions did not take place in the store and that this fact is significant. At least one transaction did take place in the store and was observed by an officer of the MPD. A business is obliged to control its premises, including its parking area. When a drug dealer stands next to the front door of a business, on the business premises, and conducts drug sales within feet of that door, the business is failing to control its premises.
[47] The Licensee maintains that the use of off-duty police officers was discontinued because officers were no longer available. The obligation to secure the business premises remains with the Licensee regardless of the availability of off-duty officers to assist in the effort.
[48] The police report also makes no mention of the bicyclists on the first pass. They may not have been there at that time.
[49] Licensee Brief, at 10.
[50] Ms. Edwards even recalled that the clerk had asked what brand and was told "Newport."
[51] Minneapolis Code of Ordinances, Title 13, Chapter 259.230(b).
[52] Exhibit 3, 000095-000097.